

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the Appraiser's License of Patrick Roach	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on February 10, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The OAH record closed on March 12, 2010.

Wayne L. Sather, Staff Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, Minnesota 55146-2220, appeared for the Department of Revenue (Department).

Patrick Roach (Respondent) did not appear for the hearing in person or through counsel.

STATEMENT OF ISSUE

Should the Department issue a Notice of License Revocation to the Minnesota Department of Commerce requiring that Respondent's appraiser's license be revoked for failure to pay income taxes and for failure to file individual income tax returns for the years 2005 through 2008?

The Administrative Law Judge concludes that the Department should send the notice to revoke the license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Patrick Roach holds appraiser's license number 40064313 issued by the Minnesota Department of Commerce.

2. Roach formerly operated a business called R & R Hospitality, Inc., in St. Paul, Minnesota. In 2003, the business failed to file timely sales and use tax returns and failed to pay some sales taxes.¹ By the end of 2003, the

¹ Ex. 6 at 2.

business owed approximately \$15,000 in taxes, penalties, and interest.² The Department of Revenue declined to abate the penalties.³

3. In July 2004, the Department issued an order holding the Respondent personally liable for payment of the debt. The Respondent did not appeal the order assessing personal liability.⁴

4. On January 12, 2009, the Department mailed to the Respondent a demand for payment and intent to levy wages.⁵

5. On July 11, 2009, the Department mailed to the Respondent a notice of intent to revoke his appraiser's license.⁶

6. By letter received August 10, 2009, the Respondent requested a hearing.⁷

7. The Commissioner issued a Notice and Order for Hearing on October 14, 2009. The Notice and Order for Hearing scheduled a hearing to take place on November 20, 2009.

8. At the Respondent's request, the hearing was rescheduled to take place on January 8, 2010. On January 6, 2010, the hearing was again rescheduled, at the Respondent's request, to take place on February 10, 2010.

9. On February 10, 2010, the Respondent left a voicemail message with the Administrative Law Judge stating that he did not intend to appear for the hearing.

10. As of February 10, 2010, the Respondent owed \$16,231.04 in tax, penalties, and interest.⁸ The Respondent has not filed individual income tax returns for the years 2005 through 2008.⁹

11. Because the Respondent had been engaged in settlement discussions with collections personnel at the time of the hearing, the Department requested that the Administrative Law Judge hold the record open until March 12, 2010. If a settlement were reached before that date, the Department anticipated that the Respondent's request for hearing would be withdrawn. On March 12, 2010, counsel for the Department notified the Administrative Law Judge that the matter had not been resolved and that this Report should be issued.

² Ex. 6 at 3.

³ Exs. 6 and 7.

⁴ Ex. 5.

⁵ Ex. 4.

⁶ Ex. 3.

⁷ Ex. 2.

⁸ Ex. 6.

⁹ Testimony of Brian Fischer.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270C.72, subd. 3 (2008).¹⁰

2. Minn. Stat. § 270C.72, subd. 3, provides that if an applicant [defined to mean the holder of a license] requests a contested case hearing, the hearing must be held within 45 days of the date the Commissioner refers the case to the Office of Administrative Hearings. In addition, the applicant must receive 20 days' notice in writing of the time and place of the hearing and the allegations.

3. The Department gave proper notice of the hearing in this matter to the Respondent and has complied in all other respects with the procedural requirements of law and rule.

4. Minn. Stat. § 270C.72, subd. 1, provides in relevant part:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes, penalties, or interest, or has not filed returns. If the applicant taxpayer does not owe delinquent taxes, penalties, or interest, but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

5. The Respondent owed \$16,231.04 as of February 10, 2010, in delinquent taxes, penalties, and interest, and Respondent has failed to file individual income tax returns for the years 2005 through 2008. The Respondent has not demonstrated that he is not liable for the delinquent taxes, penalties and interest and has failed to show that he is not required to file the missing returns.

6. The Department has met the statutory requirements for notifying the Commissioner of Commerce that Respondent's appraiser's license should be revoked.

¹⁰ All statutory citations are to the 2008 edition.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to the Minnesota Department of Commerce indicating that the Department of Commerce must revoke the Respondent's appraiser's license.

Dated: March 23, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228 for specifics of how to file exceptions or present argument. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.